

TESTIMONY PROVIDED BY RUTH ANN BERKHOLTZ AND MARC
HERSTAND ON BEHALF OF SENATE BILL 246 ON JANUARY 24, 2008
BEFORE THE SENATE COMMITTEE ON HEALTH AND HUMAN SERVICES

Thank you for this opportunity to testify on Senate Bill 246. We are speaking on behalf of the Wisconsin Chapter of the National Association of Social Workers which represents over 2300 social workers in every region of Wisconsin. Approximately 50% of our members serve as licensed clinical social workers.

Senate Bill 246 will modify state law by adding licensed clinical social workers, marriage and family therapists and professional counselors to Wisconsin Statute 632.89, to allow these mental health professionals to receive insurance reimbursement for mental health services outside of a state regulated outpatient mental health clinic. This bill also modifies other provisions of state law to allow licensed clinical social workers, marriage and family therapist and professional counselors to receive Medicaid reimbursement for mental health services outside of state regulated outpatient mental health clinics.

The bill has three main purposes. First it eliminates duplicative regulation that currently exists for licensed clinical social workers, marriage and family therapists and professional counselors in Wisconsin. Although these professions have been regulated since 1992 by the Department of Regulation & Licensing, they have also continued to be regulated by the Department of Health and Family Services for their work in outpatient mental health clinics.

Second this bill would decrease costs for hundreds of small businesses in Wisconsin that provide mental health services to Wisconsin residents. In addition to annual clinic costs, most clinics pay thousands of dollars for supervision that would not be required under Department of Regulation & Licensing rules. They also spend countless hours dealing with extensive paperwork to retain this unnecessary oversight. With the possible exception of Michigan, Wisconsin is the only state in the United States where licensed clinical social workers are not guaranteed insurance reimbursement outside of a state certified clinic and have to deal with this costly and onerous dual regulatory oversight.

Third this bill should increase "consumer choice" and access to mental health services for some Medicaid clients by allowing licensed clinical social workers, marriage and family therapists and professional counselors to provide services outside of state regulated outpatient mental health clinics. Some Medicaid clients may prefer to see a therapist outside of an outpatient mental health clinic, believing their privacy could be better protected at a less public setting. In cases where clients lack transportation, allowing licensed mental health professionals to

receive reimbursement outside of a state regulated clinic could provide more access to services, particularly in rural areas.

As I mentioned earlier, to the best of our knowledge every state in the United States with the exception of Michigan and Wisconsin have insurance reimbursement and approximately 50% of the states have the Medicaid reimbursement provision. Illinois just passed its Medicaid reimbursement bill unanimously. Minnesota has had both provisions of this bill for decades.

I would now like to address the fiscal note for this bill. The Department of Health and Family Services is estimating that this bill would cost the State of Wisconsin \$648,200 in general purpose revenue. Although this is a tiny percentage of the overall Medicaid budget, we believe this bill could save the state money or be fiscally neutral. First of all, the fiscal notes' reference to physician referrals serving a "gate keeper" function does not fit with our experience in the field where primary care physicians and psychiatrists usually appreciate having their patients seen for psychotherapy and rarely, if ever, decline a referral. Actually referrals go back and forth because some people come to a LCSW, w/o a physician/psychiatrist, and are referred for a medical/psychiatric evaluation and treatment. Since it is not serving this gate keeping function, it ends up being unnecessary paperwork and a waste of professional time.

Secondly, although we don't have access to DHFS's budget for clinic certification unit, we think the State should save money if most of the 700 private clinics, now certified, opt out with the passage of AB463. This should save money going for staffing, transportation, supervision, and supplies for the surveyors visiting these clinics.

Thirdly, the note indicates that any time oversight decreases, MA utilization increases and the 200-600% increase in use of glucose monitors was given as an example. While durable medical supplies aren't the same as psychotherapy services, I would contend that the appropriate use of these machines could save money if lab, hospital, and ER costs went down if diabetics were using their machines. Similarly, mental health services, delivered when needed, can decrease overall medical costs—including hospitalizations and ER visits. Many primary care physicians refer patients because their emotional problems are affecting their general health. I have sat on the Task Force on Integrated Healthcare sponsored by the WI Mental Health Association and DHFS over the past couple years. The efficacy of including mental health care as an integral part of overall health care is well established and even espoused by DHFS.

Finally, the last paragraph of the fiscal note just isn't accurate, at least in the experience of my colleagues and me. Managed care companies do not depend on DHFS clinic certification. Many do their own on site visits and out of state managed care personnel have told me that WI is the only state that has the state

clinic certification. They use it only because they can—i.e. to eliminate providers. What they DO depend on for credentialing is licensure!

In summary, I wish I could tell exactly how much SB 246 would save/cost. I know it gives regulatory relief to small business owners running mental health and substance abuse clinics all over our state-- allowing them to devote that time to their profession of helping people.

One concern that has been raised about this bill is the issue of patient rights. Over the last several months we have held a number of meetings with consumer groups, including NAMI Dane County, which has endorsed the bill, Mental Health America, Grass Roots Empowerment and Disability Rights Wisconsin. Grass Roots Empowerment and Disability Rights Wisconsin have raised concerns about the possible loss of patient rights protections in State Statute 51.61, confidentiality of records in state statute 51.31 and the grievance procedure in State Statute 51.61. In terms of the confidentiality of patient records we have agreed to amend the bill to add licensed mental health professionals and licensed psychologists operating outside of an outpatient clinic as covered by the treatment records provision of State Statute 51.31. In terms of general patient rights protection found in State Statute 51.61, we have learned that licensed mental health professionals providing mental health services are covered even if they are working outside an outpatient mental health clinic.

In terms of the grievance procedure concern, aside from DHFS's grievance procedures, currently clients have access to the grievance procedures of the Department of Regulation & Licensing, the grievance procedures of the professional association of the practitioner, and the grievance procedures of the insurance company paying for the service. In a November 9, 2007 memo from James Yeadon with the Department of Health and Family Services, Mr. Yeadon indicated that for practical reasons, independent practitioners were left out of the state grievance procedure when it was developed in 1995. He said they decided at that time that any complaints about independent practitioners would have to be dealt with by their licensing agency, which would be the Department of Regulation & Licensing. He also said that he thinks the same reasoning should apply today—that any good therapist will try to work out any problems the client is having with them. The client can file a complaint with licensing if they believe any rights are violated by the therapist.

We agree with Mr. Yeadon's comments. We are not aware of any clinical social worker that does not have some kind of internal and external grievance procedure. Despite Mr. Yeadon's comments, in a later memo DHFS has expressed concern that these licensed mental health professionals will no longer be subject to DHFS's grievance procedure.

At the request of Dianne Greenley with Disability Rights Wisconsin we have added an additional amendment related to the grievance procedure. This

amendment specifies the requirements of a grievance procedure provided to clients.

In terms of overall patient protection, I have attached a handout with this testimony that lists all the requirements to become a licensed clinical social worker in Wisconsin. In my fifteen years of attending meetings of the Social Workers Section at the Department of Regulation & Licensing I have learned that Wisconsin is one of the strictest states in the United States in terms of obtaining clinical licensure. There are licensed clinical social workers from other states who come to Wisconsin who do not receive reciprocity licensure because their standards are not as strict as those of Wisconsin. In Wisconsin, prior to becoming a licensed clinical social worker someone will need to pass two national exams and one state exam, complete a graduate clinical social work internship of 900 hours, complete 3,000 hours of supervised clinical social work practice after graduate school, graduate from an accredited graduate program in social work, complete three specified clinical social work courses in graduate school and complete 30 hours of continuing education including four hours of ethics education every two years.

Finally I would like to mention four amendments we are currently proposing to Senate Bill 246. First as discussed above, we are proposing an amendment to State Statute 51.30 (1) (b) to add licensed mental health professionals and licensed psychologists practicing outside an outpatient mental health clinic in order to protect the confidentiality of their client records. Secondly we are adding to 632.89 (1) (e) 4 A licensed mental health professional within the scope of her/his practice as permitted under chapter 457 and applicable administrative rules. This addition will be added to make the bill congruent with certain restrictions under our licensure law regarding substance abuse counseling. Third we are making a technical modification to Section 5, 632.89 (1) (dm) to clarify that licensed mental health professional does not mean individuals in training for the licensed marriage and family therapist or professional counselor certificate. Finally we have added a grievance procedure to State Statute 457.26 (2) with a cross reference to State Statute 51.61(5) (e)

Thank for your time and attention. We would be happy to answer any questions.

Sincerely yours

Marc Herstand, MSW CISW
Executive Director
NASW WI Chapter

Ruth Ann Berkholtz, LCSW, MSW
Chair, NASW WI Clinical Network



MADISON PSYCHIATRIC ASSOCIATES, LTD.
SERVING THE MADISON AREA FOR OVER 50 YEARS

PHONE: 608-274-0355 FAX: 608-274-5546
WWW.MADISONPSYCHIATRICASSOCIATES.COM

GENERAL PSYCHIATRY:

January 23, 2008

Amy Bourne MD

Lodan Mostaghimi MD

Jeffrey Schiffman MD

Jon Erpenbach

Chair, Senate Committee on Health, Human Services, and Job Creation
State of Wisconsin Senate
Madison, WI 53702

CHILD/ADOLESCENT
AND GENERAL PSYCHIATRY:

Murray Kapell, MD

Robert B. Shapiro MD

Michael T. Wilkovsky, MD

Dear Senator Erpenbach,

PSYCHOLOGY

Carmen Alonso PhD

Lea Aschkenase PhD

Constance S. Clune PhD

Alison J. Einbender PhD

Bruce R. Erdmann PhD

Rona Finman PhD

Donal MacCoon PhD

Paul H. Miller PhD

Colleen Mortell, PhD

Maureen A. O'Leary PhD

Michael N. Sweetnam, PhD

Dorothea A. Torstenson PhD

On behalf of all the clinicians listed on our letterhead, I am writing in support of Senate Bill 246. Madison Psychiatric Associates is the oldest independent mental health clinic in Wisconsin and has almost a 55-year history of providing high quality care. All of our clinicians must be licensed to the highest level of their respective disciplines. As one of the eight current partners in this small business enterprise, I share responsibilities for the operation of our clinic; our budget of approximately 1.5 million dollars is based entirely on our own revenue. We work with dozens of insurance companies, including Medicare and Medicaid, and must have high quality management information systems as well as high quality clinical care in order to survive in a highly competitive marketplace.

In the relatively recent past, all of our Masters prepared social workers became fully licensed as independent practitioners by the Department of Regulation and Licensing. Prior to that, they were required to practice under the supervision of an M.D. or Ph.D. and in a certified outpatient clinic in order to collect third party reimbursement. The Department of Health and Family Services monitored that supervisory process. Because of that process many other standards were also implemented and regularly monitored by the department. Even though since then all of our clinical social workers are now fully licensed, the Department of Health and Family Services still wants to regulate much of what we do. That regulation requires compliance and, as you well know, compliance requires TIME; TIME to discuss forms; TIME to monitor forms; TIME to deal with problems of forms being done incorrectly; TIME to report on how all of the above is going. All of this TIME takes away from providing direct service to our clientele. In other words, it is an expense devoted primarily to paperwork and forms, which does nothing to improve

CLINICAL SOCIAL WORK

Ruth Ann Berkholz BCD LCSW

Deborah A. Darby BCD, LCSW

Tracy Lewis ACSW LCSW

Thomas A. O'Connor ACSW LCSW

Michael Wahle ACSW LCSW

our quality or competitive edge. We are in a highly competitive, rapidly changing industry. We spend way too much TIME discussing, designing, re-designing, implementing, and internally monitoring the policies and procedures imposed by the state. We need to spend that TIME capturing more of the market share to survive. Creativity and competition are vital for entrepreneurship and they also require TIME.

Because of our clinic's prestige in the Dane County marketplace, we have contracts with Dean Care, Physicians Plus, and Unity Health Plans. In addition, we have contracts with other managed care organizations. All of these health care businesses require us to maintain certain standards, which include a strong appeal process if one of our patients is dissatisfied with our service. This appeal process will continue regardless of the State's requirements. This is duplicative.

On behalf of all of the clinicians at Madison Psychiatric Associates as well as the many other mental health clinics in the state, the vast majority of which function as small businesses, I urge you to pass Senate Bill 246.

Sincerely,

A handwritten signature in black ink, appearing to read 'T. O'Connor', with a large, sweeping flourish extending to the right.

Thomas A. O'Connor, LCSW
President Elect, Madison Psychiatric Associates
Madison, Wisconsin

Wisconsin Coalition of Behavioral Health Providers, Inc.
P.O. Box 615, Wausau, Wisconsin 54402-0615
715-842-3913

Testimony on Senate Bill 246
Before the Senate Committee on Health, Human Services, Insurance and
Job Creation
January 24, 2008

Good morning, Mr. Chairman and Members of the Committee. My name is David Dropkin. I hold a masters degree in counseling, am a licensed professional counselor and a licensed marriage and family therapist. I own and operate an outpatient mental health and addiction treatment clinic located in Brown Deer. I am also the current President of the Wisconsin Association of Behavioral Health Services (WABHS). WABHS is the only statewide organization that represents the interests of mental health and addiction treatment clinics in Wisconsin

As part of my duties as the president of WABHS I serve as our representative to the Wisconsin Coalition of Behavioral Health Providers, Inc., an umbrella organization whose other members are the Wisconsin Association for Marriage and Family Therapy, the Wisconsin Counseling Association, and the Wisconsin Mental Health Counseling Association. We are behavioral health professionals all licensed by the Department of Regulation and Licensing under Chapter 457 of the Wisconsin Statutes.

I come before you today to comment on SB 246. The intended purpose of the bill in my view is to enable licensed mental health professionals to be paid directly by third party payors. Currently as you may be aware third party payors are not required to pay directly to masters level clinicians for outpatient mental health and addiction services they provide. According to Wisconsin Statute 632.89 (1)(e) licensed mental health professionals are not listed under the definition of outpatient services and so are not eligible for direct reimbursement by third party payors. The bill you are considering today would, among other things, list licensed mental health clinicians under the definition of "outpatient services".

As an organization WABHS is made up of clinics from both rural and urban areas. Both small clinics that have a few providers and large clinics that are part of statewide organizations are included. As such we have not reached a single consensus regarding the passage of this bill. We see this as being a complex issue that should not be considered quickly or without thorough review.

I feel confident in saying that our members support third party payment, or "vendorship." We think Senate Bill 246 will allow third party payors more flexibility in securing outpatient mental health services for their subscribers. If enacted, the bill could potentially lower clinic operating costs and increase patient access to services.

However, as a clinic owner and provider I have serious concerns regarding the limitations that this bill will place on the State of Wisconsin Department of Health and Family Services. My objections center on page 3 lines 1, 2, and 4. Under these Medical Assistance provisions, DHFS is prohibited from requiring patient referrals, provider supervision, and service delivery in a state certified clinic. I believe that these prohibitions will place a large number of patients at risk. These patients, those receiving services through the state Medicaid program, often pose more complex problems and as such are more vulnerable and may not be as "system savvy" about how to redress grievances or report irregularities in their treatment as

Testimony on Senate Bill 246

Before the Senate Committee on Health, Human Services, Insurance and Job Creation
January 24, 2008

other patients might be. Filing complaints with the Department of Regulation and Licensing may eventually result in a provider licensure revocation, but DRL is not the patient protection enforcement agency that we think may be needed in this area.

Another major concern is that the prohibitions in this legislation dictate to DHFS how to run the Medicaid program. These prohibitions will not apply to other third party payors. I feel that it is not the role of providers, as much as we may want to, to dictate to third party payors how they should run their business. The same way I do not want the third party payors to tell me how to run my clinic. I do support making it possible for all licensed mental health clinicians to receive direct payment for the work they do.

We have suggested to the NASW and patient advocacy groups an amendment to the bill that would satisfy our concerns. In Section 1, page 3, replace the phrase "the department may not require" with "the department may waive..." These amendments would allow the department to enable providers to be paid outside a clinic environment if the DHFS so chooses. There is reason to have this flexibility since access to treatment is a serious problem for MA and other patients in underserved areas. If the department can waive portions of the Medicaid regulations, greater access to services may occur.

We recognize that this suggestion may not resolve the concerns of all parties, but we welcome working with other groups on alternative solutions.

Until these concerns are addressed, we cannot fully support SB 246.

Thank you Mr. Chairman and Members of the Committee for the opportunity to speak to you today.

FAMILY THERAPY CENTER OF MADISON

700 Rayovac Drive, Suite 220
Madison, Wisconsin 53711
(608) 276-9191 * Fax (608) 276-9144

January 24, 2008

Sen. Jon Erpenbach and members of the committee
Wisconsin Senate Committee on Health
State Capitol
Madison, WI

Re: Senate Bill 246

Dear Chair Erpenbach and committee members:

I am a citizen of the State of Wisconsin and a Licensed Clinical Social Worker who practices independently in a small state certified mental health clinic. I have done so for over 25 years. I am in complete support of Senate Bill 246, the Mental Health Access and Equity Bill. As you know, this bill modifies WI Statute 632.89., eliminating duplicative and unnecessary regulation of licensed clinical social workers, licensed professional counselors and licensed marriage and family therapists in our state.

This bill will increase access to services for Wisconsin consumers. Licensed clinical social workers and other master level psychotherapists are low-cost providers of mental health services. Undue regulation has driven small clinics out of business, which is especially a problem in underserved areas of the state. My own clinic has been in danger of losing some of the providers who are MD's or PhD's, and who are not bound by the requirement to practice in a state certified clinic in order to receive mandated reimbursement for services.

In addition, Wisconsin consumers should have access to a variety of settings, including smaller clinics, not just larger, more impersonal corporate-run clinics or public funded facilities. Senate Bill 246 will especially be helpful in making services available to poor, working class and middle income citizens, who must rely on insurance or Medicaid reimbursement. They will be able to use their insurance to pay for providers in the type of setting that best fits their needs.

As a small business owner, I have felt unduly burdened by the oversight and micromanagement of the Department of Health and Family Services, with requirements, including unnecessary documentation, which not only fail to benefit my clients, but in fact, burdens them as well. I have decades of experience and am a licensed professional. This double oversight by two state agencies has felt discriminatory, since other disciplines (licensed psychiatrists and psychologists) have never been required to practice in certified clinics in order to be eligible for the mandated insurance coverage specified in

632.89. Now that clinical social workers and other master's level providers are also licensed under DRL, they deserve the same rights to practice.

In addition to my direct practice, for many years I have also been a UW lecturer and supervisor of social work graduate students. I am well aware that Wisconsin loses promising new professionals because of the obstacles to practicing here. Colleagues who move to Wisconsin from other states have expressed shock and discouragement at the obstacles to practice in this environment of excessive and costly dual regulation. Some have moved on to other states specifically for this reason.

Obviously, it is more costly to our state to duplicate oversight and regulation by two agencies. At the same time, the new bill will NOT expand the mandated benefits. There will be no increased costs to insurance companies who are already mandated to reimburse mental health professionals. There will simply be more access to services by consumers and relief to Wisconsin business owners who up until now have shouldered the burden of excessive regulation by DHFS. The new bill will also update Medicaid rules to reflect current clinical practice.

This bill will decidedly help my small business, which includes me and 16 other practitioners. On behalf of Wisconsin mental health consumers and small business owners, I urge you to pass SB246.

Thank you for your attention to this matter of critical importance to our citizens.

Sincerely,

Carol Faynik, MA, LCSW

Testimony
SB246
Thursday, January 24, 2008, 10:00 AM
Health and Human Services Committee
400 SE

Dear Senator Erpenbach and Members of the Health and Human Services Committee,

My name is Donna Ulteig, and I have been a private practice clinical social worker in Madison for over 22 years. I am a partner in a small business mental health clinic called Psychiatric Services, SC, a business that employs psychologists and psychiatrists as well as clinical social workers. The 3 licensed clinical social workers in the practice (two others besides me) have a total of over 50 years of clinical experience. Our current group of 17 has experience in the hundreds of years.

To me and to my social work colleagues SB 246 is a "no brainer," a long overdue legislative change. We are very experienced mental health professionals, licensed by the Department of Regulation and Licensing to practice independently. Unlike the other licensed and experienced mental health professionals in our clinic, we cannot bill third party payers unless our clinic has gone through a certification process conducted by the Department of Health and Human Services. This certification process requires evidence that we are being supervised, in contradiction to our licensure. Moreover, there is NO evidence that this certification process results in improvement in treatment quality.

This requirement, established long before our profession was licensed, represents a costly duplication for the state and for our individual clinics. While I certainly am not qualified to determine the amount of money now expended because of DHFS staff time involved in dual regulation, as chair of our Quality Assurance Committee I am qualified to tell you how much this certification process cost our clinic. If we calculate the \$350 biannual charge, the cost of supervision, lost revenue because of time spent in supervision, and monthly committee meeting time to make certain we meet the credentialing requirements we are talking \$45,000/year, not small potatoes to our small business.

It is only good business for our clinic to decide for itself how it will maintain quality. After all, we are subject to scrutiny and site visits from Medicare, medical assistance, HMO's and other private sector fee for service plans that could choose to cut us off financially should we choose not to maintain the standards they establish. I am saying this by way of demonstrating that this dual regulation is unnecessary, and not in any way to denigrate the dedicated DHFS people who do this work.

I also notice that other professional clinics are free of this dual regulation. Can you imagine the state telling a law office how to operate before the attorneys are allowed to bill for services? We are a group of experienced mental health clinicians and we deeply respect our clients' rights for confidentiality, expert assessment, ongoing input into

treatment plans, and high quality state of the art mental health treatment
So, it is no wonder that we are miffed that we have to go through this expensive, unnecessary, duplicative process without concomitant results. What is wrong with this picture!

In rural areas, poor persons needing treatment for mental illness also suffer. Licensed Clinical Social Workers and other licensed mental health professionals seldom set up practice in these areas because they cannot afford to become a certified clinic. Masters level mental health professionals are the low cost (But, interestingly, not poor outcome) clinicians, but MA clients do not have access to these providers because of how costly it is to the providers. The controversial estimate to correct this problem projects that the cost will involve mega bucks--\$600-700,000??? Now, I think the jury is still out. But, if there are that many unserved people in rural areas, isn't it about time that they have access to treatment. Would we tolerate that many people not having access to other health services?

So, if this bill were passed, small business clinics and mental health clients will win. Who will lose? Will the taxpayers lose because of increased health care costs due to increased access? We can study this matter for your satisfaction and defer the financial portion until 2009 if that is a roadblock.

Thank you for your time,

Donna M. Ulteig, LCSW, ACSW, DCSW
Clinical Social Worker
Psychiatric Services, SC
2727 Marshall Ct.
Madison, WI 53705

PROPOSED AMENDMENTS TO 2007 ASSEMBLY BILL 463

Add to 51.30 (1) (b) "Treatment records" include the registration and all other records concerning individuals who are receiving or who at any time have received services for mental illness, development disabilities, alcoholism, or drug dependency which are maintained by the department, by county departments under s. 51.42 or 51.437 and their staff, by treatment facilities and *licensed mental health professionals as defined by 632.89 (1) (dm) and licensed psychologists under the provisions of 455.04 (1) who are not affiliated with a county department or treatment facility.*

Add to 632.89 (1) (e) 4. A licensed mental health professional *within the scope of her/his practice as permitted under chapter 457 and applicable administrative rules.*

Amend Section 5 632.89 (1) (dm) "Licensed mental health professional" means a clinical social worker who is licensed under ch. 457, a marriage and family therapist who is licensed under ch. 457.10 or a professional counselor who is licensed under ch. 457.12

Amend Sec. 457.26 (2) by adding the following:

(i) Performed clinical social work, marriage and family therapy or professional counseling without making available a grievance procedure to their patients that meets the following requirements:

It is in writing and a copy is given to the person when entering treatment or upon request;

Contact information is provided for the professional association of the certificate holder or for a person not involved in the action giving rise to the grievance who could be available to investigate the grievance

There are time limits for responding to grievances and for appeals;

There is an appeal process;

There are protections against retaliation for the person filing the grievance or anyone assisting with the grievance.

Amend Sec. 51.61(5) (e) "A licensed mental health professional as defined in Sec. 632.90 (1)(dm) shall have a grievance procedure to protect patient rights that meets the requirements of Sec. 457.26(2)(i) A grievance procedure under this paragraph does not constitute a grievance procedure under paragraphs A & B.

Amend 51.61(9) *With the exception of sub section 5e*, the Department shall promulgate rules to implement this section.